

**Remarks/Arguments**

**I. Status of the Claims:**

Claims 2–14, 77–79 and 108-117 are pending in the application.

**II. Rejections Under 35 U.S.C. § 102:**

Claims 2-14, 77-79 and 108-117 stand rejected under 35 U.S.C. § 102(b) as being anticipated by PCT Publ. No. WO 00/78925 by Bloom, *et al.* (hereinafter “Bloom”). Applicant respectfully disagree.

Under 35 USC § 102, a claim can only be anticipated if every element in the claim is expressly or inherently disclosed in a single prior art reference. *See Kalman v. Kimberly Clark Corp.*, 713 F.2d 760, 771 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984); *see also PPG Industries, Inc. v. Guardian Industries Corp.*, 75 F.3d 1558, 1566 (Fed. Cir. 1996) (“[t]o anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter”). Bloom fails to meet at least this burden.

Independent claims 2, 3, 77, 79 and 108 are directed, in part, to isolated *E. coli* which lack genetic material from bacteriophage Wphi, Mu or bacteriophage , T2, T3, T4, T5, T6 and T7. The Examiner asserts that Bloom *et al.* discloses *E. coli* strain W and BRL3781 at Table 1, page 37 and that, based on paragraph [0010], page 4 of the instant application, these strains were free of “genetic material of bacteriophage Wphi and/or does not contain the genetic material of bacteriophage Mu and or is resistant to bacteriophage T1 infection.” (Office Action, page 3.)

As noted in the declaration of Fredric Bloom submitted with this reply, this interpretation of paragraph [0010] is not correct. It was known at the time of filing of the instant application

that *E. coli* W contains bacteriophage. For example, the presence of Mu as a prophage in *E. coli* W was described by Toussaint in 1987 (Toussaint, A., A History of Mu, in: Phage Mu, N. Symonds *et al.*, Eds., Cold Spring Harbor Laboratory Press, 1987, p. 3). The presence of Wphi in *E. coli* W can be found in Glover S.W. and Kerzman G 1967 *Genet Res.* 9:135-139 and Kerzman G., Glover S.W., Arnovitch J. 1967 *J. Gen Virol.* 1:333-347.

In contrast, Bloom teaches, in part, “obtaining a rapid growing microorganism containing endogenous plasmids and curing the microorganism of endogenous plasmids” (see page 4, lines 17-19; *emphasis added*). Therefore, rather than disclosing *E. coli* lacking genetic material from bacteriophage Wphi or Mu, Bloom discloses *E. coli* lacking endogenous plasmids.

Further, the Examiner asserts that the feature of *E. coli* W lacking genetic material of bacteriophage Wphi or Mu is inherent in the disclosure of Bloom. (Office Action, page 5.) The Examiner appears to base this assertion at least in part on the statement in paragraph [0010] “[i]n one embodiment, the invention includes *E. coli* strain W that does not contain the genetic material of bacteriophage Wphi and/or does not contain the genetic material of bacteriophage Mu and/or is resistant to infection with T1 phage”. Again, as noted in the declaration of Fredric Bloom, this is an incorrect reading of paragraph [0010], it is known in the art that *E. coli* W contains bacteriophage. As discussed above, Bloom teaches curing microorganisms of endogenous plasmids, not *E. coli* lacking genetic material from bacteriophage Wphi or Mu. Therefore, Bloom is lacking the inherent disclosure that the Examiner alleges.

In light of the above, Applicant submits that Bloom fails to teach all of the combinations of features set forth in claims 2-14, 77-79, and 108-117 and respectfully requests that the rejections thereof under 35 USC §102(b) be removed.

**CONCLUSION**

Applicant hereby respectfully petitions under 37 C.F.R. § 1.136(a) a three (3)-month extension of time for submission of this response and submits the required extension fee via electronic filing. Any additional fees (including but not limited to appropriate petition fees or fees for net addition of claims) are hereby authorized to be charged to our **Deposit Account No. 50-3994**, from which the undersigned is authorized to draw funds.

Respectfully submitted,

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